

REMARKS

Amendments

Claim 1 is amended to expressly recite that the means for securing permit movement of said heat exchanger block. This amendment does not require further search and/or consideration. See, e.g., claim 7 wherein it is recited that the securing means have two axes of rotation. Claims 12 and 14 are amended to recite the whereby clause from claim 1. These amendments also do not require further search and/or consideration. Claim 2 is amended to correct an obvious typographical error by insertion of the word "wherein." Finally, claim 9 is amended to correct the spelling of fractionation. Entry of the amendments is respectfully requested.

Rejection under 35 USC §102 in view of Walter et al.

Claims 1-3, 6, and 8-10 are rejected as allegedly being anticipated in view of the disclosure of Walter et al. (WO 99/11990). This rejection is respectfully traversed.

The anticipation rejection fails to set forth where each any every element of the claimed invention is disclosed by Walter et al., a document which is German, not English. The anticipation rejection should be withdrawn for this reason alone. See, e.g., *Ex part Levy*, 17 USPQ 2d 1461, 1462 (BOPA 1990):

The factual determination of anticipation requires the disclosure in a single reference of every element of the claimed invention. ... Moreover, it is incumbent upon examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference.

The rejection does not show where the disclosure of Walter et al. describes all of the elements of applicants' independent claim 1, let alone the further features recited in dependent claims 2, 3, 6, and 8-10.

Walter et al. disclose a heat exchanger 17 which as shown in figure 2 is fixed to the insulation wall 18 by clamps 50 and roped shaped elements 40, 41. Further, it is held by mounting brackets 37. There is no suggestion in the rejection that the heat exchanger

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17 is arranged moveably.

In the rejection it is argued that "capable of" is interpreted as requiring the ability to perform a function. Thus, to show all features of the claimed invention, the rejection must show that the applied prior art has this capability. The feature can not simply be ignored. Further, the rejection's failure to consider the whereby clause is clearly improper. With respect to "adapted to," "whereby," and "thereby" clauses, see, e.g., *Pac-Tec Inc., v. Amerace Corp.*, 14 USPQ 2d 1 871, 1876 (Fed. Cir 1990).

In view of the above remarks, withdrawal of the rejection is respectfully requested.

Rejection under 35 USC §103 in view of Walter et al.

Claim 17 is rejected as allegedly being obvious in view of Walter et al. (WO '990). This rejection is respectfully traversed.

In the rejection it is alleged that a triangular shape for plate (37) is an obvious design choice. But, the rejection presents no rationale as to why one would modify the heat exchange arrangement disclosed by Walter et al. so as to provide a securing means having a first element, fixedly connected to the heat exchanger block, and a second element, which is articulately connected to the first element, in which the second element is articulately secured in an insulating vessel. As described above, Walter et al. disclose a heat exchanger 17 which is secured by rope shaped elements 40 and 41 and mounting brackets 37. Nothing suggests modifying these securing means to be in the shape of a triangular plate. Nor is there any suggestion of securing a heat exchanger by means of a triangular shaped second element in accordance with applicants' claim 17.

In view of the above remarks, withdrawal of the rejection under 35 USC §103 is respectfully requested.

Rejection under 35 USC §103 in view of Walter et al. and Thompson et al.

Claims 3-5 and 10-16 are rejected as allegedly being obvious in view of Walter et al. in combination with Thompson et al. (US 5,131,459). This rejection is respectfully traversed.

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The disclosure of Walter et al. is discussed above. Applicants' disagree with the allegation that Walter et al. discloses all of the features of applicants' claimed invention, other than movement about the center of gravity, plural heat exchangers, a common connecting line, and a securing means permitting two axes off rotation. Walter et al. do not disclose all of the features recited in any of applicants' claims. See the above discussion in the anticipation rejection.

US '459 disclose a heat exchanger assembly which is to be positioned within a duct through which heated gases flow, e.g., for use in heat recovery steam generation. The heat exchanger assembly comprises a series of heat exchanger tube panels (not blocks), each panel including an upper and lower pipe header. Also, each panel is attached to a hanger which supports the tube panel and a mechanism is provided which attaches the hanger to a structural support member. These mechanisms permit the tube panels to be moved for maintenance purposes. However, when in operation the tube panels are maintained in a fixed position. See the Abstract and Column 1, line 52-column 2, line 3.

As described in US '459, when a maintenance worker needs access to a tube panel, the pipe connection to the upper and lower headers are first severed and then a jack 50 is used to raise and lower the tube panel. See, e.g., column 3, lines 61-67. Then, when maintenance is complete, the tube panels are reattached to the interconnecting pipes. See column 5, lines 17-20.

Thus, US' 459 does not disclose or suggest heat exchanger blocks that are moveably arranged within an insulation vessel as recited in applicants' claims. For example, as discussed above, the tube panels of US '459 are fixed during operation and are severed from the connecting pipes which bring water to the headers during maintenance, that is, when the tube panels are moveable by the disclosed jacks. Thus, the tube panels are not moveable in a manner whereby they can move so as to compensate for thermally produced changes in the lengths of pipes connected to the tube panels

In view of the above remarks, it is respectfully submitted that the disclosure of Walter et al, taken alone or in combination with the disclosure of Thompson et al, fails to render obvious Applicants' claimed invention. Withdrawal of the rejection is respectfully requested.


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Rejection under 35 USC §103 in view of the Jepson Preamble and Thompson et al.

Claims 1-16 are rejected as allegedly being obvious in view of the subject matter of Applicants' Jepson preamble taken in combination with Thompson et al. This rejection is also respectfully traversed.

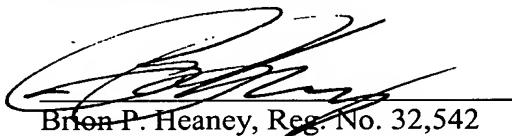
As discussed above, Thompson et al. does not disclose or suggest heat exchanger blocks that are moveably arranged within an insulation vessel as recited in applicants' claims. It is respectfully submitted that the subject matter of Applicants' Jepson preamble, taking alone or in combination with the disclosure of Thompson et al., fails to render obvious Applicants' claimed invention. Withdrawal of the rejection is respectfully requested.

Priority Document

 Applicants again respectfully request acknowledgement of receipt of the certified copy of the German Priority application, DE 10110704.8. The certified copy was filed April 23, 2002.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,


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Attorney Docket No.: **LINDE-581**

Date: **May 19, 2003**

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